IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 368 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

ELECON ENGG CO

Appearance:

MR AKIL KURESHI for MR MANISH R BHATT for Petitioner

MR HM TALATI for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.R.DAVE

Date of decision: 01/08/2000

ORAL JUDGMENT

(Per R.K.Abichandani, J.)

The Income-tax Appellate Tribunal, Ahmedabad Bench-B, has referred the following two questions for the opinion of this Court under Section 256(1) of the Income-tax Act, 1961:-

"1. Whether on the facts and in the circumstances of the case and in law the Tribunal was right in holding that only 10% of Rs.42,884/- was disallowable as Guest House expenses aand the balance was neither Guest House expenses nor the entertainment expenditure disallowable u/s. 37(4) or 37(2A) of the Act?"

2. Whether on the facts and in the circumstances of the case and in law the Tribunal was right in holding that the expenses for bank charges of Rs.20,215/- were entitled for weighted deduction u/s. 35B of the I.T. Act?"

2 The relevant Assessment Year was 1978-79 and 1971-72. The assessee is a public limited company which had adopted mercantile system of accounting. It had derived the income for the previous year relevant to the said Assessment Year from the business of manufacturing and selling of engineering equipments. The assessee claimed deduction of Guest House expenses as well as export market allowances. The ITO did not allow the claim for Guest House expenses of Rs.42,884/- in respect of which the deduction was claimed. Similarly, he disentitled the claim of weighted deduction of Rs.22,315/- for bank charges on the ground that the bank charges were paid in connection with their remittance realisation, etc. and that had nothing to do with the development of export.

3 In appeal the CIT (Appeals) held that a sum of Rs.4,288/- being 10% of the total expense only be disallowed for non-business expenditure. Similarly, he allowed the claim of assessee on bank charges on the ground that the expenses mentioned were expended for promotion of the export and therefore the claim was justified.

4 The Tribunal confirmed the appeal of the CIT (Appeals) on both the grounds.

5 It is pointed out so far as question no.1 referred to above is concerned that the point involved therein is covered by a decision of this Court in CIT v.

Ahmedabad Mfg. & and Calico Printing Co. Ltd reported in 197 ITR 538 in which it was held that the assessee was entitled to the deduction of rent paid by him for the premises which were used as a guest house. The assessee was also entitled to the deduction of cost of repairs to such premises. It was held that both the items of expenditure in paying the rent for premises described as guest house and for water connection therein were covered by Section 30(a)(i) of the Act and therefore the expenditure could not be disallowed u/s 37(4) of the Act. Following the ratio of this decision, we hold that the Tribunal was right in holding that only 10% of Rs.42,884/- was disallowable as guest house expenses and the balance was neither guest house expenses nor the entertainment expenditure disallowable u/s 37(4) or 37(2A) of the Act. Question no.1 is therefore answered in the affirmative against the Revenue and in favour of the asssessee.

6 The question no.2, we are told, is also covered by a decision of this Court reported in ISABGUL EXPORT CORPORATION v. CIT reported in 205 ITR 237 in which in the context of the provisions of Section 35-B it was held that the expenditure incurred for bank charge did not fall under any of the sub-clauses of clause (b) of Section 35B(1) of the Act and therefore the said expenditure did not qualify for weighted deduction u/s 35B of the Act. Applying the ratio of this decision, we hold that the Tribunal committed an error in holding that the expenses for bank charges of Rs.2,215/= were entitled to weighted deduction u/s 35B of the Act. Question no.2 is therefore answered in the negative, in favour of the Revenue and against the assessee.

The reference stands disposed of accordingly with no order as to costs.

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